

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEVEN MICHAEL RINDAL,

CASE NO. 2:22-CV-01843-RSL

Plaintiff,

v.

ORDER GRANTING WINCHESTER'S
MOTION TO DISMISS AND GRANTING
LEAVE TO AMEND

DONALD MCDERMOTT; JAMES A.
WINCHESTER; ALAN R. SOUDERS;
SANDRA F. PERKINS; RICHARD A.
WEYRICH; LISA M. JANICKI; PETER
BROWNING; RONALD G. WESEN; AND
THE COUNTY OF SKAGIT,

Defendants.

This matter comes before the Court on “Defendant Winchester’s Motion to Dismiss Under FRCP 12(b)(1) and 12(b)(6).” Dkt. # 19. Having reviewed the memoranda submitted by the parties, the Court finds as follows:

Background

Plaintiff alleges that he has been a chiropractor for fifty years in the State of Washington. During the COVID-19 pandemic, one of his patients, defendant James Winchester, complained to the Washington Department of Health that no one in plaintiff’s office was wearing a mask. The Chiropractic Quality Assurance Commission sent plaintiff a “barrage of correspondence” which culminated in the revocation of his

1 chiropractic license. Dkt. # 3 at ¶ 22. Plaintiff alleges that he sent an affidavit to
2 Winchester on or about December 10, 2021, detailing the wrongs done to him.
3 Winchester did not respond, which plaintiff incorrectly construes as an admission that
4 Winchester agrees with plaintiff's allegations and has consented to the entry of judgment
5 against him.¹ When Winchester hired an attorney to represent him, plaintiff sent a second
6 affidavit to Winchester and the attorney, this time demanding payment of over \$75
7 million.
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10 In the Amended Complaint, plaintiff alleges that Winchester is equitably estopped
11 from contesting the assertions made in the affidavits and that he has violated numerous
12 federal laws, the vast majority of which are listed with only a brief (and sometimes
13 misleading) summary of the statute. Dkt. # 3 at ¶¶ 44-46. Winchester seeks dismissal of
14 the claims against him under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), but both arguments
15 are based on the assertion that the federal claims asserted against him are not viable. The
16 Court therefore evaluates the adequacy of the allegations under Rule 12(b)(6).
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18 Discussion

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20 The question for the Court on a motion to dismiss is whether the facts alleged in
21 the complaint sufficiently state a "plausible" ground for relief. *Bell Atl. Corp. v.*
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24 ¹ Silence or a failure to respond gives rise to a contract under Washington law only where there
25 is a duty to speak. *See Goodman v. Darden, Doman & Stafford Assoc.*, 100 Wn.2d 476, 482–83
26 (1983); *Saluteen-Maschersky v. Countrywide Funding Corp.*, 105 Wn. App. 846, 853 (2001).
27 There is no reason to believe that defendants had any obligation to respond to the documents
28 plaintiff unilaterally drafted and mailed to them. Nor would it be reasonable to conclude that
defendants consented to the entry of judgment against them regarding the matters set forth in the
affidavits simply because they did not affirmatively object or respond to plaintiff's out-of-court
statements.

1 *Twombly*, 550 U.S. 544, 570 (2007). In the context of a motion under Rule 12(b)(6) of
2 the Federal Rules of Civil Procedure, the Court must “accept factual allegations in the
3 complaint as true and construe the pleadings in the light most favorable to the nonmoving
4 party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008)
5 (citation omitted). Although the Court’s review is generally limited to the contents of the
6 complaint, *Campanelli v. Bockrath*, 100 F.3d 1476, 1479 (9th Cir. 1996), “[w]e are not . .
7 . required to accept as true allegations that contradict exhibits attached to the Complaint
8 or matters properly subject to judicial notice, or allegations that are merely conclusory,
9 unwarranted deductions of fact, or unreasonable inferences,” *Daniels-Hall v. Nat’l Educ.*
10 *Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010).

13 To survive a motion to dismiss under Rule 12(b)(6), a complaint must
14 allege “enough facts to state a claim to relief that is plausible on its face.”
15 []*Twombly*, 550 U.S. [at 570]. A plausible claim includes “factual content
16 that allows the court to draw the reasonable inference that the defendant is
17 liable for the misconduct alleged.” *U.S. v. Corinthian Colls.*, 655 F.3d 984,
18 991 (9th Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).
19 Under the pleading standards of Rule 8(a)(2), a party must make a “short
20 and plain statement of the claim showing that the pleader is entitled to
21 relief.” Fed. R. Civ. P. 8(a)(2). . . . A complaint “that offers ‘labels and
22 conclusions’ or ‘a formulaic recitation of the elements of a cause of action
23 will not do.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).
Thus, “conclusory allegations of law and unwarranted inferences are
insufficient to defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d
1179, 1183 (9th Cir. 2004).

24 *Benavidez v. Cty. of San Diego*, 993 F.3d 1134, 1144–45 (9th Cir. 2021). If the complaint
25 fails to state a cognizable legal theory or fails to provide sufficient facts to support a
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1 claim, dismissal is appropriate. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d
2 1035, 1041 (9th Cir. 2010).

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4 Plaintiff alleges that Winchester filed a false complaint with the Washington
5 Department of Health as part of a vendetta to destroy plaintiff's business. Plaintiff does
6 not allege that he was, in fact, in compliance with the mask mandate that was then in
7 effect, but rather that the mandate was invalid and it was therefore false to suggest that
8 plaintiff was doing anything wrong. Plaintiff's allegation of bad faith on Winchester's
9 part or a vendetta against his business is unsupported: the only evidence in the records
10 suggests that Winchester was reacting to what he saw at plaintiff's office when he made
11 his complaint to the regulatory authority. Thus, plaintiff has adequately alleged no more
12 than that Winchester filed a complaint against him. Plaintiff asserts that by filing of the
13 complaint, Winchester violated the following federal laws:
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- 16 a. Weaponizing Elected officials using false information;
- 17 b. 18 U.S.C. § 1001 (statute criminalizing the making of false statements to federal
18 authorities);
- 19 c. 18 U.S.C. § 2331(5) (the definition of "domestic terrorism");
- 20 d. 42 USC § 3617 (statute making it unlawful to retaliate against anyone
21 exercising a right under the Fair Housing Act);
- 22 e. 18 U.S.C. § 241 (statute criminalizing conspiracies to injure or intimidate any
23 citizen in free exercise of any federal statutory or constitutional right or privilege);
- 24 f. 18 U.S.C. § 4 (statute criminalizing concealment of the commission of a felony);
- 25 g. 18 U.S.C. § 2385 (statute criminalizing the teaching and advocacy of the violent
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1 overthrow of the government); and

2 h. 10 U.S.C. § 1094(c)(1) (statute authorizing a civil monetary penalty of \$5000 if
3 a person in the armed forces provides health care without a license).
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5 Plaintiff does not identify the law precluding “weaponization,” he alleges no facts
6 which could establish Winchester’s liability under any of the cited statutes, and/or he
7 lacks standing to enforce the criminal statutes identified. In his opposition to
8 Winchester’s motion to dismiss, plaintiff lists two other statutes, 42 U.S.C. § 1983 and
9 RICO, and argues that his request for a referral of his allegations “to the proper
10 authorities for criminal investigation” should not be dismissed. Plaintiff has not, however,
11 asserted a § 1983 or a RICO claim against Winchester, nor has he alleged any facts which
12 could support such a claim. With regards to his request for a referral, courts generally
13 play no role in developing the disputes that come before them: it is for law enforcement
14 and the prosecutor to determine whether defendants’ conduct justifies investigation
15 and/or prosecution.
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18 **Futility of Amendment**

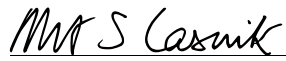
19 A “pro se litigant is entitled to an opportunity to amend ‘[u]nless it is absolutely
20 clear that no amendment can cure the defect.’” *Walker v. Beard*, 789 F.3d 1125, 1139
21 (9th Cir. 2015) (quoting *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir.1995));
22 *Thinket Ink Information Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th
23 Cir. 2004). Plaintiff has not yet had an opportunity to amend his complaint, and the Court
24 cannot say with certainty that amendment would be futile.
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27 Plaintiff may have a viable claim against Winchester, but he has not asserted any
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1 facts which suggest culpability: reporting plaintiff's violations of the mask mandate,
2 standing alone, does not make Winchester liable for the regulator's response to plaintiff's
3 conduct. Plaintiff may, on or before August 9, 2023, file an amended complaint which
4 clearly and concisely identifies the acts of which Winchester is accused and how those
5 acts violated plaintiff's legal rights. The amended complaint will replace the existing
6 complaint in its entirety. Failure to timely file an amended complaint that asserts a
7 plausible claim for relief will result in dismissal of the claims against Winchester with
8 prejudice.
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12 The Clerk of Court is directed to note this "Leave to Amend" on the calendar for
13 consideration on Friday, August 11, 2023.
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16 Dated this 7th day of July, 2023.

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18 ROBERT S. LASNIK
19 United States District Judge
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